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ABSTRACT

This report reviews the philosophical and practical basis of teacher tenure. The discussion includes tenure both at the elementary, secondary, and higher education levels. General observations are based on the same criticisms of tenure at every educational level. The major areas of study include the present situation, background of tenure, mythology, and alternative plans. A brief summary indicates the desirability of maintaining tenure. A 38-item bibliography is included. (Related document is SP 006 239.) (MJM)

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WHAT IS TENURE?

A Critical Explanation

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WHAT IS TENURE?

Introduction

Dr. Robert Sherman has done an outstanding job in reviewing the philosophical and practical basis of teacher tenure. Even though in the course of my experience as a teacher and teacher union officer I have read much about tenure, I found his account extremely interesting and informative.

A theme runs throughout this paper: teachers, professors and other school employees almost universally approve of tenure and wish the tenure system to be strengthened, while those in the administration end of the educational enterprise -- school superintendents, college presidents, trustees, etc. -- are just as universally opposed. The AFT, as a teachers' organization, obviously will continue to press hard for tenure legislation and for implementation of other due process and job security provisions in negotiated collective bargaining contracts.

David Selden

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WHAT IS TENURE?

Preface

Because of widespread criticism of teacher tenure today, the American Federation of Teachers has asked that an explanation of tenure be prepared for teachers and the public. The purpose is to trace the history of tenure, to appraise the criticisms, and to suggest a point of view for teachers. To help with the analysis, the AFT surveyed State Departments of Education about the status of tenured teachers.

It should be said at the outset that tenure is a complex matter. It is many things, and some of these things are more or less essential at different times and from different points of view. Thus, tenure must be judged on balance and from one's own point of view -- as a teacher or a school board member, for example. Moreover, the explanation that follows tries to give a general "sense" of tenure rather than telling simply that it "is" this or that. Those criticisms (and there are some) that imply tenure is a simple thing, that it is more rightly understood from one point of view than another, and that unless it is all good it is bad, are rejected.

This explanation is intended for practical information and use, mainly from a teacher's point of view, so the academic tone and logic deliberately is subdued. But teachers should hope for more critical evaluations of tenure. Teachers themselves can contribute to a better understanding of tenure along these lines. Teachers too often allow themselves to be treated as if their intelligence was good only for passing information on to students, not for defending their own interests.

There is a lot of junk that has been written about tenure. In the following explanation, sources for only the most important items are

indicated in the text by number and page, keyed to a reading list at the end of the booklet. But the ideas not documented are not simply fabrications: it is only that following them is of secondary importance. (This is not simply a research exercise!) In all cases where documentations do not occur, the reader should be confident that the references do exist and can be given if needed.

Finally, the discussion includes tenure both at the elementary/secondary and higher education levels. Certainly there are some differences in tenure at these levels. The attack against tenure today undoubtedly has its impetus in the criticism of higher education, but it has reached the elementary and secondary schools as well and it is an attack against the whole idea of tenure. Moreover, the same criticisms of tenure are made at every level of education, so the analysis and evaluation of those criticisms can be made generally, as well. What is the history, analysis, and prospect of tenure? These are the general issues raised.

The Scene

Tenure is under attack today. Perhaps this is nothing new. The job security and due process rights of teachers never have been won easily. And at times in history -- in the depression of the 1930's, in the war fears that blew hot and cold between 1910 and the 1950's, and in the protest movements of the 1960's -- the teacher's right to his job has been violated wholesale.

But there is new strength in the attack against tenure today. It is an attack against tenure itself and not simply against a few teachers. The critics of tenure today are so many and varied that they add to a new and powerful force. Tenure is marked, at one time or another, as the cause of most of what is wrong with education and, by implication, society. The president of one State Senate, for example, was quoted as saying, "Eliminate the evil of tenure and you've taken a giant step toward solving the problems of education."

More radical critics believe tenure causes teachers to lose their courage and settle for education that is mediocre and routine. Graduate students and young professors attack tenure because they think it limits the teaching jobs available. Some older teachers notice that tenure has the effect of keeping salaries low. Other public critics think that teachers do not work enough and that tenure keeps them on the job, and on the public payroll, even when there is no need for their services. Still others wonder why teachers should have tenure when most workers in society (it is always in "business") do not. School administrators also continue to blame tenure for whatever may be the school's failings: "Tenure ties our hands," they lament.

One should notice that the attack on tenure today is both from the political right and left. There was a time when one could hope that liberal thinking persons, at least, could see the humane and progressive relationship between tenure and the work teachers have to do in communities that are not yet fully free and enlightened. But today the left joins the right to argue that tenure is the common problem of both, even though each wants a radically different kind of society. This makes strange bedfellows. For example, the Greater Philadelphia branch of the American Civil Liberties Union, an organization that never has been ashamed of its historic defense of due process, noted six months ago that because tenure presumes teacher competence, ". . . anyone in the academic community who is disturbed at the situation is put in the invidious position of having to bring charges of incompetence and substantiate them. . . ." What other kind of presumption has ever and should ever interest an organization like the ACLU?

Worst still, teachers themselves have joined the act. Some of the most persistent beliefs about tenure -- unsubstantiated for the most part, as will be shown in the following pages -- are widely shared by teachers. Instructor magazine carried "Opinion Poll(s)" on tenure in the January, 1970 and April, 1971 issues. Of 100 elementary school-level subscribers polled, 62.1% thought that tenure protects the "drones" in teaching; 51.7% said they would oppose tenure if they were on a school board. Many who responded were vigorous in their opinions that tenure is bad. They said: it is a mask for incompetence and poor teaching; the school cannot get rid of such teachers; it makes less room for new teachers; business does not have tenure, so why do the schools?

The criticism has been picked up by students, too. It has become an issue for campus politics. Candidates for student government president at the University of Florida in April, 1972, were asked to debate their views about tenure. They all thought it had some value, but they were unanimous in believing that it shelters incompetent teachers.

With this web of criticism, it is not surprising that tenure is thought to be a national problem. Newspaper syndicates have carried accounts of the tenure problem for the national audience. The Wall Street Journal had an account on April 16, 1971, and The Washington Post had one a short while later. The New York Times editorialized about tenure on April 27, 1971. It defended academic freedom and tenure but said "there admittedly have been abuses of tenure," and it called for a "special burden" on academic leadership "to tighten its own safeguards against abuses of tenure."

National government has gotten into the act too. The then Secretary of Health, Education, and Welfare, Robert Finch, defended academic freedom before a house Education Sub-committee on April 18, 1969, but he also characterized faculty with tenure as one of the most privileged classes in the world. Two national commissions have followed this pontification. The "Scranton Report" (Report of the President's Commission on Campus Unrest, Government Printing Office, 1970, pp. 13,201) notes the obvious need for freedom in education, but it gives no hint of understanding how tenure is related to this ideal and no evidence for its claim that in order to improve teaching, tenure should be reconsidered. The "Newman Report" (Report on Higher Education Health, Education, and Welfare, March, 1971, p. 100) has a similar evaluation. Among a list of recommendations to bring about change in teaching in higher education is "a revision of standard tenure policies -- leading toward

short-term contracts for at least some categories of faculty positions." Many teachers would grant readily that faculty need to experience what is going on in other parts of society, but again the report assigns the mark by suggesting that tenure prevents this: "A young faculty member dare not lose his place in the line for tenure or fail to publish the additional work on which it may depend."

There is in most of the criticism of tenure a dramatic lack of evidence and intelligent reasoning. This is not to say the criticisms have no merit. It is to say that their merit is difficult to determine because they are factually inadequate and logically imprecise. A few examples should make the point. One of the functions of tenure is to protect teachers from arbitrary dismissal. Thus, it is a truism that tenure makes dismissals difficult, and the critics who repeat this point again and again would be more helpful if they could show how the difficulty makes effective educational management less possible. Also, it is to be expected that some teachers who have tenure will be more competent than others. But "incompetence," which is claimed to be widespread in education today, is something to be defined and then demonstrated. For the most part the critics of tenure do not bother themselves with this work.

Much of the criticism of tenure comes from self-experience and generalizes from one or two instances. It seems that "everyone knows" a teacher who is a failure in some way but who cannot be dismissed, it is thought, because he is tenured. But does this prove that tenure is a general problem? In fact, there is reason to believe that the criticisms of tenure do not even mark the right problems or the critical points of problems in education. An example of this is the curious belief that tenure is to blame for the lack of jobs in education today and that it has prevented minorities from being hired more readily.

A summary that makes more sense than any of these criticisms is given in the report on "Academic Tenure at Harvard University" (16, p.63), which says, "It should be noted . . . that the major criticisms of tenure have emerged not so much in the form of direct analysis of the institution itself, but generally as obiter dicta within larger investigations of the present 'malaise' of American colleges and universities."

Academicians have added to the current interest in tenure. An abundance of notions are being published in professional journals. Even so, there still is no systematic and comprehensive history, analysis, and empirical evaluation of tenure. More than one book about tenure is scheduled to be published shortly. But if they simply repeat the popular criticisms, claims, and nostrums, they will add nothing to the debate. A thrust in another direction is being made by the Commission on Academic Tenure, co-sponsored by the Association of American Colleges and the American Association of University Professors, which is studying directly the tenure policies and procedures in higher education. A report of its findings with appropriate recommendations was scheduled for publication in the fall of 1972. "In general, the Commission is interested in the relationship between tenure and teaching effectiveness, professional growth and development, collective bargaining, institutional governance and effectiveness, and the law . . . ."

Hard data on these matters should spark better judgment of the present conventional wisdom about tenure. Until such a time as better evidence is available, however, the only course is to try to make sense out of what does exist. That is why this booklet has been prepared to explain tenure for teachers and the public.

It is fashionable in scholarly writing for an author to admit his "biases" before giving his analysis and conclusions. If "bias" means simply that an author has a reason for or an interest in doing the study, then this fashion is harmless. The interest that motivates this explanation of tenure is that a process that intends to protect teachers should be given a full and fair evaluation, on the basis of what presently is known, before it is altered. But the explanation is not "biased" simply because it does not yield to the popular criticisms. Rather, as C. Northcote Parkinson, of the famous "Parkinson Laws," has said, ". . . When the chorus of mutual praise reaches its climax . . . someone is needed to say 'Rubbish'!"

The criticism of tenure -- though it is blame, not praise -- is at this point today. Another habit of authors is to say that "the critics have a point," but to suggest this for most of the criticisms of tenure would be misleading and a sign of false humility. There simply are more claims to knowledge about tenure than a review of the evidence warrants, which is to say there is more rubbish than anything else. Reading widely and critically in the literature about tenure, one is struck by how complex and confused, factually and analytically inadequate, and politi ally motivated and dominated are the attacks against teacher tenure; and it is these things that must be made known to teachers and the public. Although some critics would call those who defend tenure "apologists" (25), it appears that more people at this time should be candid enough to admit as did only 6.9% of those responding to the Instructor "Opinion Poll" (January, 1970) that, for example, they "do not know" whether or not tenure protects the "drones." And the political nature of much of the criticism of tenure should make teachers hope for a wider application of the good sense expressed by one student government candidate for president (see above) who said that tenure ". . . is not an issue that should be decided on political grounds."

The talk about "evidence" and "hard thinking" is not intended to dismiss the criticisms of tenure by intimidation. It is simply to indicate that the major fault with most of the criticism is that it masks popular opinion and political interests as knowledge. Certainly few people have the time and energy, even if they have the inclination, to think hard about everything. And because the variables in tenure are so complex, it may be almost impossible to make a test of the ideas (22, p.318). Nevertheless, the appeal to evidence and critical analysis is the only way to get a better understanding of the conventional wisdom about tenure. Thus it is the intent here to do the hard thinking about tenure and to draw together the evidence that does exist so teachers and the public will have a better idea of what the problems really are.

History

In 1968 the Supreme Court of South Dakota said about tenure (Worzella v. Board of Regents): "The exact meaning and intent of this so-called tenure policy eludes us. Its vaporous objectives, purposes, and procedures are lost in a fog of nebulous verbiage." It might seem, as one professor has remarked, that "the origins of tenure are lost in the haze of history." But enough information does exist so general observations can be made about the origins, objectives, and procedures of tenure. Comment on what the South Dakota court believed was vague and overabundant language is not necessary here. Some persons think that is a fault of all legislation!

There really should be nothing vague about the meaning of tenure. It is the fact or right of holding something, especially property; in the case of teachers, it is the right to hold their jobs. "Tenure" also refers to the manner and condition of holding one's job. It is the status granted, usually after a probationary period, which protects the teacher from dismissal except for cause to be determined through a formal hearing. Other things often are said to be a part of tenure, but they are not; it is not a sinecure, or freedom from accountability, or a guarantee of teaching assignment or conditions, or even a guarantee of salary.

The emphasis on "due process" is vital. One writer titles his explanation, "Tenure Means You Can Challenge Unjust Dismissal" (Michigan Education Journal, April, 1968). Clark Byse and Louis Joughin spell out the elements of due process in their study of tenure, which is one of the best. Due process they say, is a well-established part of the American legal tradition; it is based on the principle that "the accused is entitled to know the case against him, to confront and cross-examine adverse witnesses, and to present evidence and argument to an unbiased tribunal" (7, p. 60). In some or most of the 80

institutions they studied, due process implied specifically the right to: be present, separation of prosecutory and judicial functions, counsel, cross-examine, present and summon witnesses, an available full record, prompt adjudication, and appeal procedures (7, pp. 62-68). It should be noted that all these elements are not followed even in every institution that has a tenure policy. But they represent the ideal.

Fritz Machlup points out that there are four types of tenure: by law, by contract, by moral commitment under a widely accepted academic code, and by courtesy, kindness, timidity, or inertia (22, p. 311). This is not to say that one kind of tenure is equally as good as another. For example, Machlup notes that the last type of tenure -- where some teachers might "expect to hold their positions indefinitely because . . . it is rather unpleasant to send some on the staff packing, and quite a bother to look for a replacement" -- does not provide the one sound basis for tenure, to protect academic freedom (22, p. 312). Also, it should be noted that what is meant by tenure often is provided under other names; in elementary and secondary education especially, "continuing contract," "fair dismissal," and "professional practices" legislation provide much, if not all, of what are thought to be the benefits of tenure.

Tenure limits the right of educational management to dismiss teachers except for cause. The development of the idea "for cause" is part of the history of tenure. There was a time when teachers could be and were dismissed for almost any reason. Gradually, as teaching was professionalized, a new attitude was developed toward attracting and retaining competent teachers. Causes for dismissal should have direct educational relevance and be reasonable and necessary. Given that thinking, religious, personal, political, and marital grounds no longer were appropriate causes for dismissal. Incapacity and immorality became two of the most common and generally stated grounds for

dismissal. Later, financial exigency was recognized as a cause. To be sure, the earlier arbitrariness in dismissal could be masked within these causes. Teachers with unorthodox characteristics of any kind might be said to be incapacitated or immoral in some way, or financial exigency might be used to mask the difficulty of proving other charges. But stating particular causes, even though general, nevertheless has the good effect of establishing rules so dismissals do not always have to be fought after the fact.

There is no question that today the right of dismissal is not absolute. Courts have gone far in holding that teachers (even those not under tenure) are protected against dismissals not based in fact, or without reasons, or for reasons that violate Constitutional rights. Also, in order to guard against dismissals based on trivial or inadequate grounds, stated causes often are qualified or explained in greater detail. Byse and Joughin note that institutions frequently qualified "cause" by adding "good," "adequate," "grave," "just," "justifiable," or "sufficient" (7, p. 45). Furthermore, the causes can be made explicit. "Incapacity" might be physical or mental, and it can include incompetence or failure to perform duties; "immorality" might include sexual relationships, expecially with students, the use of profanity, or conviction of a crime; "financial exigencies" might result from the loss of student enrollment, termination of a course of study, or budgetary cut-backs.

Financial exigency provides a good example of how causes for dismissal can be limited. It has been well established that dismissals for this reason should be a last resort and, if made, should carry certain rights with them, such as the right to be rehired first. Even in difficult budgetary times, such as the present, it is doubtful that dismissals for financial exigency really are necessary. Byse and Joughin found that financial exigency had not been a significant problem in the institutions they studied (7, p. 50).

This probably is true largely in elementary and secondary education also. In addition to a normal turnover in teaching personnel, there are so many other ways financial problems can be handled short of dismissing tenured teachers -- a small reduction in salaries of all teachers instead of dismissing a few, non-reappointment of untenured or lesser experienced personnel, or a reduction in spending in other areas -- that dismissals for this reason should be rare.

Though grounds for dismissal generally have become less arbitrary, this is not to say the hands of educational management are tied very tightly. The latitude that exists in most states at the elementary and secondary level for dismissing teachers or denying them tenure is sobering. According to a summary of state statutes prepared by the National Education Association (26. September 30, 1970), 38 states (including the District of Columbia) had at the time state-wide tenure laws without exceptions, three had less than state-wide laws (that is, with some exceptions), and five had tenure only in certain places. Only Mississippi, North Carolina, South Carolina, Utah, and Vermont have no tenure laws of any kind, though most of them do require contracts and permit long-term contracts.

Within these tenure laws there exist a variety of reasons for dismissing teachers or withdrawing their tenure. Sixteen states or communities (that is, less than state-wide) deny tenure to teachers after a certain age; in most cases it is 65, but in two states it is 70 and in two others it is 62. This provision seems to be connected with retirement age. Alaska provides that tenure is lost when employment in a district is interrupted or terminated; Florida provides that any employee can be returned to an annual contract for three years for cause; and 20 states have penalties, usually loss of certification, for resignation in the middle of the year or for refusal to teach.

Inadequate professional character can lead to dismissal. Failure to maintain discipline and inefficient management is a cause in two places; and unprofessional conduct, conduct unbecoming an instructor, and disreputable conduct is a cause in three others. Iowa allows dismissal for teachers who have shown "partiality." Failure to make professional advancement or professional growth is a cause in four states and communities. Maine has a provision for dismissing teachers who are shown to be unfit or whose service is "unprofitable" to the school system. Cruelty or brutal treatment are causes for dismissal in five states and communities. In three states, teachers can be dismissed for disobedience or dishonesty. Any causes which are grounds for loss of teaching certificate also are grounds for dismissal in Nevada. In addition, medical reasons (lack of a medical or physical examination; communicable diseases) are causes for dismissal in four states.

California leads the states in provisions for dismissing teachers for criminal syndicalism, membership in the Communist Party, teaching to indoctrinate in communism, or refusing to answer questions about communism. Four other states have similar provisions for disloyalty, teaching disloyalty, advocating the overthrow of state or federal governments, and unAmerican activities. Crime is a cause for dismissal in two states or communities; in Louisiana, for example, membership in or contributions to an organization declared illegal or enjoined from operating in the state can lead to dismissal.

Of course the statutes are not all restrictions on teachers. Many spell out protections as well. For example, political or personal reasons cannot be used for dismissal in Alabama, and there can be no dismissal for exercising constitutionally protected rights in DeKalb and Fulton counties, Georgia. Marriage explicitly is said not to be a cause in three states and communities (although Waterbury, Connecticut, still has a provision whereby

women teachers may be dismissed for marriage). In Massachusetts a teacher may not be dismissed for exercising voting rights, signing nomination papers, petitioning the general court, or appearing before a legislative committee, unless such things are done on school premises, during school hours, or when interfering with school duty. (On the other hand, Missouri teacners cannot manage campaigns for the election or defeat of school board members in districts in which they are employed.) In larger cities in New York (over 125,000 population), no charges can be brought against a teacher for incidents that are more than three years old, except where the misconduct constitutes a crime.

There also are a variety of professional protections. No teacher can be dismissed in Pennsylvania unless efficiency ratings have been kept by the school board. In Chicago, if charges against teachers are for causes that are remediable, the teacher must have been given warning that the charges would be brought if the causes were not removed. Though school boards in Virginia have the right to dismiss both tenured and non-tenured teachers because of enrollment decreases or subject cancellations, in Colorado no teacher's salary can be reduced for budgetary reasons unless there is a general reduction in all salaries in the district, and in Oregon a tenured teacher cannot be made part-time without consent.

But an equal variety of vague, catch-all, and special causes still exist also. Though dismissal is provided for, no causes for dismissal are listed in the laws of three states. In Illinois, no causes are listed for dismissal in smaller communities (less than 500,000 population), but reference is made to other statutes -- for example, to the law against cruelty. Any, or any other, good and just causes or reasons are gounds for dismissal in six states. And there still are vestiges of local morality in some state laws: Florida has a prohibition against drunkenness, and Louisiana still provides for dismissal of teachers who advocate integration.

Generally one might expect probationary teachers to be judged by the same criteria, for probation is claimed to be necessary as a time in which the teacher is expected to demonstrate the talents and conduct expected of permanent employees. The Wyoming statutes do say that probationary teachers are subject to the same causes for dismissal as are tenured teachers; the Massachusetts laws provide due process rights for most probationary teachers; and Iowa, which has no probationary requirement, provides for automatic renewal of all contracts after a certain date and due process rights for any teacher not retained. While the NEA survey noted that generally probationary teachers are dismissed for the same or similar reasons as tenured teachers, Myron Lieberman points out that only 18 states have due process rights for non-tenured teachers (21, p. 55).

Some states do have different or additional causes for probationary teacher dismissal. Probationary teachers in Texas, for example, can be dismissed for willful failure to pay debts or for the use of drugs or alcohol. Alex Atty has pointed out the problems some probationary teachers face (1). In Pennsylvania the school code sets out the legal causes for dismissal of teachers. One requirement for tenure is two years of successful teaching. Thus, a teacher who is low rated in those years will not attain tenure. Atty shows that the causes of probationary teacher failure to attain tenure differ substantially from the enumerated causes for dismissal; 95.1% were dismissed for reasons other than those outlined in the school code.

The above review shows several things. One is that there is little basis for the belief that adequate provisions do not exist for removing "unproductive" teachers. Numerous causes are set out in most states and communities, and in other places the causes are general enough to cover almost any eventuality. Byse and Joughin (7, pp. 44-49) found similar causes for dismissal in higher education: "cause" (or "good cause," etc.); professional

incompetence; immorality; crime, including treason; incapacity or disability; grounds stated in the American Association of University Professors' "1940 Statement of Principles on Academic Freedom and Tenure," and failure in institutional relationships (disloyalty, lack of cooperation, etc.). In still other places -- in smaller communities in Illinois, to recall the point -- dismissal can be made for violation of other statutes. Failure to sign a loyalty oath in many states is a common example of this possibility. Also, provisions for dismissing teachers are added or changed every year. It was proposed in Florida in 1968 (though not implemented) that striking teachers should have psychiatric examinations before they were allowed to return to the classrooms. The discretion in dismissing non-tenured teachers is not greatly limited either.

The review also hints at the history of why teachers have been dismissed or have had to fear dismissal. That is, the information bears, if indirectly, on why and how tenure has developed. Not a great deal of systematic history has been written about tenure (and much of the current criticism of tenure still overlooks the historical perspective). That is why it is necessary to study other things in order to understand tenure. Another issue that can shed light on the development of tenure is the history of freedom in teaching. In what ways have teachers not been free, and has tenure developed to insure greater freedom in teaching? By far the best information on these questions is to be found in the studies by Howard K. Beale (2 and 3) on the history of freedom in teaching in America and Richard Hofstadter and Walter P. Metzger's (17) and Robert M. MacIver's (23) studies of academic freedom -- generally in higher education.

Beale's studies relate to elementary and secondary education and are based on an empirical investigation into teaching. One of his works has the special merit of a chapter devoted to tenure (2, Ch. XVI). Beale shows that

in freedom of expression, related to war problems, peace and internationalism, patriotism, politics, economic and social issues, and the studies of history, religion, and science; in textbooks and other pedagogical matters; in teacher conduct, tenure rules, and appointment; in private schools; in teaching Negroes; and as a result of extra - and intra-scholastic pressures (patriotic organizations, the press, and business; favoritism, donors, and tradition), the American teacher has not been free. In fact, he wonders if the earlier indentured servant who acted as teacher was "any more a slave to the whims of his master than is the twentieth-century small-town teacher" (3, p. 16).

Tenure developed out of the setting of restrictions and the servile status of teaching. It was important for teachers to be protected not only from dismissals but "from the innumerable repressions short of dismissal which prevent his full self-expression or deny him the privilege of intellectual honesty" (2, p. 13). Early teachers in America had no tenure by right or law, though in fact they often held their positions for life. This kind of tenure was most common, certainly, where teachers carried out or bowed to the whims of the community. Some teachers always have been free, and have used the schools, to propagandize for conventional community beliefs, but this is an undeveloped idea of freedom. Where teachers have tried to differ with orthodoxy, they have found the going less smooth.

An early test of academic freedom came in 1654 when Henry Dunster was forced to resign as president of Harvard College. Hofstadter and Metzger note that tenure at Harvard presumably was like that enjoyed by the New England clergy -- a solemn covenant between the minister and his congregation (the teacher and his students) to be broken only for the gravest reasons (17, pp. 86-91). Dunster thought that as a teacher he knew better than the Overseers how to run Harvard and that his religious beliefs were not properly the affair of the community. His views were not popular, however, and he became an early

casualty in the conflict over academic freedom and tenure. His fate could be expected by any teacher in similar circumstances.

Tutors were the main teachers at Harvard for over 100 years from its beginning. At first their tenures -- length of teaching -- were brief, usually less than three years. Thereafter their tenures lengthened (17, p. 85). Occasionally there were tutors who stayed long; one such was Henry Flynt, who taught for 43 years. But generally the early tutors were young, unmarried men waiting for a ministerial call, and their pay was not enough to keep them in teaching. Henry Flynt, and a few others like him, was exceptional. He found more satisfaction in teaching than in the ministry. Later, however, even tutors who did not go into the ministry went into public service instead of staying in teaching.

The point is that if better people were to be attracted to teaching, the conditions had to be changed. Movements developed in the early 1800's to attract better persons, to require better training, and to create better environments in which to teach. Horace Mann's work is a good example of this effort. It was logical also that for greater academic and economic security, teachers needed better salaries and the right to hold their jobs during good behavior. But at the same time, education came more under public control, and Beale suggests that when Jacksonian democracy came into power -- "with its sense of popular possession of public offices, its spoils system, its theory of rotation in office" -- teacher tenure became precarious (2, pp. 465-466). It was not again until the last half of the century, when there was a return to the merit system in politics, that the interest in tenure was revived.

Then there developed deliberate efforts to gain tenure for teachers. In 1858 New Hampshire had a law that required school committees to give a 24-hour notice and a hearing to teachers who were to be dismissed. By 1867,

John Swett in California was able to report that annual teacher examinations by the community had been replaced by professional evaluations and written examinations in specified studies and that teaching certificates were issued for life or for a time proportional to the grade level. In Massachusetts in 1886 districts were allowed to employ teachers for longer than one year; and in Boston, in 1889, teachers were given indefinite tenure at the pleasure of the board after a four-year probation had been served. The committee making this recommendation justified tenure on the grounds that annual employment did not attract good teachers nor had it helped to get rid of inefficient teachers, it was not applied to other public servants -- police and firemen -- and should not be to teachers who have a higher responsibility, and it had led to some of the best teachers being dismissed for insignificant reasons (2, p. 465).

President Charles W. Eliot of Harvard earlier had expressed the same idea when he said in 1875, "Permanence of tenure and security of income are essential to give dignity and independence to the teacher's position." In 1885 the National Education Association made an exhaustive study of tenure and urged that teaching be made independent of personal and partisan influence and free from patronage and spoils. The District of Columbia had district-wide tenure in 1906, and New Jersey had a tenure law of general application in 1909.

By the second quarter of the twentieth century, the fact as well as the theory of tenure was well established. A dozen states had tenure laws by 1925. When Beale did his study ten years later, 15 states had tenure laws. In some ways the teacher's position still was precarious, though. Beale found in a survey of 989 teachers that many did not know the tenure rules they were under, and that of those who were familiar with the rules, almost half had the protection of only one year, only one-quarter had permanent tenure after a probationary period, and nearly one-quarter did not even have a one-year contract (2, p.473).

The same trend in the development of tenure -- indeed in some respects it is the same history -- has been true in higher education. The heyday in the development of academic freedom and tenure in higher education came between 1875 and 1925; the last ten years of that period, and more recently, found the American Association of University professors active in pressing for better tenure. Hofstadter and Metzger (17) and Stanley R. Rolnick (28) have shown that tenure developed from political and economic insecurity, that it has been wedded to academic freedom, and that it has had a continuous ebb and flow. It is difficult to get an accurate view of those institutions today that have tenure plans, because there are nearly 3,000 of them, they differ in many respects, and the bulk of them have independent, rather than system - or state-wide, control. Yet it is certain that tenure in one form or another is nearly universal in higher education today. Byse and Joughin drew this conclusion from the institutions they studied, though they showed that there is a wide range in the degree of perfection in the individual plans (7, pp. 9-10, 68-70).

Courts have helped to develop the idea of tenure. Byse and Joughin quote Robert Hutchins' widely accepted thesis that the law is not basic to the protection of academic freedom and tenure, which are, rather, protected by those in society who make decisions about the purpose of education (7, p.75). But they also quote the view of Russell Kirk that "The courts, when all is said, remain the chief defense of academic freedom when a right to tenure . . . can be proved" (7, p. 75). The history of tenure seems to give weight to the latter view, though there is a sense in which the law is a poor protection -- because it is the last protection -- of any right. Byse and Joughin themselves analyze a long line of legal cases relating to the acquisition of tenure and the criteria and procedure for termination of tenure (7, Ch. III). It is hazardous to generalize about the positions courts have taken on tenure: the precedents go back far into history, there is no single entity which constitutes "the courts" (and thus the

opinions differ, change, and often contradict), and the points of law may differ subtly. Nevertheless, Byse and Joughin conclude that generally legal enforcement strengthens tenure, though the need for independent judicial review will be diminished to the extent tenure plans give final power for deciding cases to faculty and provide procedural safeguards.

Beale gives a thorough review of the legal precedents relating to elementary and secondary teaching as late as the middle 1930's (2, pp. 467-471). Again one must be cautious when speaking about "the courts." But Beale shows that in a variety of places and over a period of time court decisions have become important where the law is silent or ambiguous. For example, some courts have held that: dismissals are limited to announced causes, causes cannot be added after employment, and boards are bound by their own rules and regulations; tenured teachers have protections when schools are closed for economy, and tenured teachers cannot be demoted; teachers cannot be dismissed for marriage; and hearings must be held even if no law calls for them; new charges cannot be introduced in mid-trial; and teachers dismissed without a hearing must be reinstated and cannot be charged for the same cause later.

Where there is no tenure, the implications of contractual agreements are important. Courts have held that: contracts cannot be invalidated on a technicality; contracts cannot contain provisions for periodic annulment, and contracts made with one board cannot be rescinded by another board or by subsequent legislation; the teacher cannot be required to do work other than that called for in the contract, and salaries must be paid for the contract period even when schools are closed or reorganized for financial reasons; and oral contracts are binding where written ones are not required.

One university administrator has said recently that the courts seem inclined to grant tenure to teachers at the moment of hiring. Such a view simply is bad opinion. The view was not true, certainly, at the time Reale reviewed the cases noted above, for he showed also that "court decisions have impaired teacher tenure security as frequently as they have strengthened it" (2, pp. 471-473). Those impairments have a double force when they deny the same protections granted by other courts. Some courts hold that: all statutes and school board rules are read into contracts; no law or contract can limit board authority; a contract is no protection against authority to remove at will; tenured teachers can be demoted and can be dismissed for economy and reorganization; contracts with teachers are void if boards have exceeded their appropriations; teachers can be dismissed without being given reasons or a hearing; generally only salary may be reclaimed for a wrongful dismissal; and where other law is silent, the common law of master and servant applies and a board can dismiss teachers for adequate cause determined only by itself.

Nor is it true even today that the courts would give tenure from the first day of employment. It would be more helpful if educational administrators would take the time to understand why teachers go to court and the bases on which courts give their opinions. A National Education Association annual survey (27) and Robert H. Chanin's summary of recent constitutional developments (11) are helpful in this understanding. They suggest that arbitrariness, lack of due process, and violated rights still are the issues in court cases. This is to say that educational administrators might look for the causes of court action in their own behavior or in the kind of procedural protections provided teachers. Edwin O. Stene (32, pp. 587-588) says that one of the functions of tenure is to create a sense of community, and other institutional policies and practices often prevent this from happening. Thus, appeal to judicial proceedings may reflect a breakdown in the institutional protections, or lack of protections, teachers have.

One persistent criticism made of tenure is that it does not protect the academic freedom of non-tenured teachers. But tenure never was designed to do so. All teachers should have the protection of due process. Tenure institutionalizes due process for teachers whose professional competency already has been judged; for other teachers due process should be institutionalized in some way consistent with their probationary or other kind of status. But only 18 states now provide by law due process protections for non-tenured teachers. Thus, many teachers are turning to the courts not to claim the right of tenure but for protection of their academic freedom and civil rights. The annual NEA survey noted above (27) shows that of 55 court cases relating to tenure in 1970, 23 involved non-tenured teachers. Of this group the report says, "One of the most significant developments is decisions extending due process rights to non-tenure teachers in nonrenewal of contract situations" (27, p. 6).

A basic distinction long has been made that the burden of proof is on the non-tenured teacher to show that his academic freedom or civil rights have been violated rather than that his dismissal was based on professional grounds, while the institution that dismisses a tenured teacher has the burden to prove that its judgments are based on professional grounds and not made for personal or political reasons. There are, of course, other issues that enter into legal cases. Some teachers have argued recently that they have a "property right" to their jobs (an expectation of reemployment) even though they are not tenured. Recent rulings hold that where teachers can establish such a right, they cannot be dismissed without cause and a hearing. (See, for example, the remarks on Sindermann v. Perry in 27, pp. 6 and 44, and The Chronicle of Higher Education, July 3, 1972, p. 1.). This kind of reasoning might help to prevent what happened in one Florida university recently, where a non-tenured teacher was dismissed without recourse one year short of 30 years teaching service and full retirement.

Finally in this historical tracing, the role of professional, civil liberties, and labor organizations should be mentioned. The American Association of University Professors has been interested in tenure in higher education since it was founded in 1915. Some people say that tenure is not needed to protect academic freedom, but the AAUP always has considered tenure a necessary means to academic freedom. The organization from the beginning got involved in investigating violations of tenure, and from that it developed principles of academic freedom and tenure for institutions of higher education to follow (20, and 17, Ch. X). In 1940 it announced a "Statement of Principles on Academic Freedom and Tenure," which since has been endorsed by 82 professional and educational organizations. Institutions found to have violated the principles are "censured." The purpose of censuring is to inform the members, the profession, and the public that unsatisfactory conditions of academic freedom and tenure exist at those institutions; and members often refrain from accepting positions there.

The National Education Association made a study of tenure in 1885 and urged reform so education would be taken out of the hands of spoilsmen and patronage. In the 1920's it pointed to the need to protect competent teachers, urged indefinite tenure, and quoted leading educators in favor of tenure laws. In 1934 it resolved to secure tenure for teachers during competence and good behavior. Yet Beale says that because it was dominated by administrators, the NEA blocked effective tenure in its own ranks for a long time (2, pp. 694-695). It did this by changing the purpose of its tenure committee, by appointing committee chairmen who were uninterested in or hostile to tenure, by dropping sympathetic members from the committee, and other devices. The NEA does not use the word "tenure" in its policy resolutions today, but its Handbook does record its belief that the profession must govern itself, there must be continuing employment and fair dismissal practices in all states, and academic freedom is essential to teaching (pp. 78-79).

The American Civil Liberties Union long has been a supporter of tenure too. Its policy on academic freedom incorporates the main ideas associated with tenure -- demonstrated competence, continued employment, due process, and freedom of expression and association (Policy #57). Tenure should be attained after a limited period of probation, should depend on performance as a teacher and scholar, and should be used by responsible colleges and universities as a support of academic freedom. In November, 1971, the Academic Freedom Committee of the ACLU recommended to the Board of Directors that the support of tenure in colleges and universities be reaffirmed. The Greater Philadelphia Branch, however, has proposed that "The tenure system in its present form should be abandoned," and the issue now is being debated.

Academic freedom and tenure have been key factors in the program of the American Federation of Teachers since its chartering in 1916. It was through AFT influence that the American Federation of Labor's Committee on Education addressed itself to tenure in the years 1918 to 1920. Efforts by school boards and superintendents to dismiss teachers for political and economic reasons during the Twenties and Thirties caused locals of the AFT in various states, such as New York and Pennsylvania, to organize state federations for the purpose of enacting tenure laws.

In 1948 the AFT outlined the principles on which tenure should be based: no discharge except for proper cause, a limited probationary period, and hearings and due process. In 1968 the AFT urged affiliates to work for state tenure legislation that recognizes transfer from one system to another and for reciprocal agreements between states. The AFT reaffirmed its support for the retention and improvement of tenure in 1970, in the face of some school board associations' attacks on tenure. It reaffirmed this action again in 1971, holding that tenure was an essential protection in schools and colleges, that it was a guardian of academic freedom, that the Executive Council should assist state and local AFT groups in the support of tenure and in educating the public about the need

for good tenure laws, and that the AFL-CIO should be asked to help in defeating legislation intending to destroy tenure (Policy Resolutions).

All of this is not to say the development of tenure has been without setbacks. One interesting aspect of studying the history of tenure comes in noting the same criticisms that have been made again and again. William Van Alstyne remarks that tenure has been debated throughout history; it never has been allowed to pass as conventional wisdom (37, p. 328). One might recall, for example, the plan for faculty evaluation proposed by President Andrew Dickson White of Cornell University, who wanted the trustees to review the performance of each professor annually and to dismiss those who received a sufficient number of unsatisfactory votes (17, p. 395). The plan never was put into effect. The idea also calls to mind the remark by Byse and Joughin (7, p.154): "It may be significant that no college or university offers criteria or procedures by which the faculty -- the persons whose lives and welfare are one with that of the institution -- can take action to remove a trustee of demonstrated incompetence."

In the 1890's the supply of college and university teachers was nearly saturated, as it is today, and the bargaining position of professors was fiercely competitive; but then, unlike today, the demand for tenure was loud and forcible. In 1917, the Association of American Colleges, an organization of college presidents, criticized the American Association of University Professors by asking, "Shall any association of university professors compel a corporation to retain in office for an indefinite time one who is manifestly unfit for that particular place...?" (17, p. 484). That was no more the point of those advocating tenure then than it is now.

During World War I many professors were fired from their jobs for not being sympathetic with the Allied cause. The value of tenure, strengthened since then, may be noted in part by the fact that there have been few of those kinds

of dismissals even in the midst of the Viet Nam protests. Beale has described how tenure was violated wholesale during the Depression of the 1930's through the mask of fiscal economy (3, pp.264-268). The same pressures are alive today. Teachers themselves have been led to think -- in the 1930's and similarly today -- that tenure is to blame for the lack of jobs, not an economic and political system that will not finance education adequately and that encourages oversupply (38, pp. 345-347).

Again in the 1950's a debate grew over tenure, probably as a result of the scare over Communists in teaching and other kinds of "subversion," such as advocating racial equality, but also because of the belief that tenure restricts dismissals even in cases where academic freedom is not involved, and thus protects incompetence. Several states repealed their tenure laws in the 1950's. Shortly after, in 1963, a university president predicted "an end to the tenure principle" and thus a result in "better teaching and better learning." From then until now there has been a continuous criticism of tenure, summed up in the words of a Vermont education official who replied several months ago to an AFT survey by ejaculating, "We do not have tenure and hopefully never will."

It is easy to see that tenure did not grow all in a piece. It grew by its and starts, in one place and another, and for different reasons. But one thing is sure: it grew as the United States changed from a simple to a complex, industrial society and as education became professionalized. Tenure was a benefit not only for the individual teacher but for the society as well. Byse and Joughin note this in a remark that has been quoted widely: "Academic freedom and tenure do not exist because of a peculiar solicitude for the human beings who staff our academic institutions. They exist, instead, in order that society may have the benefit of honest judgment and independent criticism which otherwise might be withheld because of fear of offending a dominant social group or transient

social attitude" (7, p.4). Also, Howard K. Beale notes that the United States has inherited conflicting traditions that affect the teacher's freedom: on the one hand, equalitarian democracy, with its belief in deciding what is right by counting noses and forcing those who disagree to conform; on the other hand, the heritage of liberty and independence in thought and action (2, pp.18-21). Tenure and other protections have developed, one might say, as a means for controlling these tendencies in education.

Mythology

President Albert Shanker of New York's United Federation of Teachers has called the attack on teacher tenure "a drumfire of misconceptions" (29). Worst than that, it is based on mythology. This is not to say there are no problems with tenure. It is to say that most of the popular criticisms cannot withstand even a preliminary analysis, and the conclusion so often drawn, that tenure should be abandoned or radically modified, would not resolve even the problems tenure is said to create. The common arguments against tenure need to be analyzed. Three of the more popular ones are considered here.

Education is dominated by a conflict of different values -- of the trustees and boards, administrators, teachers, students, and the general public. For example, M. R. Duvall (14) has shown that principals and superintendents believe tenure makes it impossible to discharge unsatisfactory teachers, reduces incentives toward in-service improvement and attendance at summer school, and requires greater supervision of teachers; but teachers believe tenure makes teaching more professional, reduces resignations, encourages self expression, creates incentives to work on personnel policies and problems, and improves community-teacher relationships. The criticism and judgment of tenure must be made with this sort of thing in mind.

1. Tenure is a special kind of security enjoyed only by teachers. Many people believe this. An article in The Wall Street Journal (24) says the public increasingly believes teachers do not need or deserve special rights or protections beyond those guaranteed all citizens by the Constitution. Some educators say the same thing. John R. Silber, president of Boston University, recently used almost the same words in a speech to the Modern Language Association (31).

Educators, of all persons, should understand the fallacies in this thinking. The talk of "special" rights and protections cannot advance the discussion of tenure very far at a time when "equality" is a dominant political value. The issue is not whether teachers are "special," in the sense of being more favored, but whether teaching puts freedom in an uncommonly precarious spot. Tenure has grown out of the belief that it does. It has been said that most workers can go from day to day without running the risk of political disfavor because their work is technical or mechanical, but the teacher's work is critical thought and speech itself (5, p. 6). There is enough evidence that teaching has needed some kind of special consideration.

But is this consideration needed any longer? Most critics do not deny the past history of repressions, but some say teaching has reached a point where academic freedom now is secure. "(Critics) contend that the principle of academic freedom now is so well established that no administration or board of trustees at any reputable school would dare violate it" (24). One wonders where these people are looking (16, p. 64). They cannot be looking at the increasing litigation over teacher rights, discussed above (27), or they must not have heard that faculty filed 1,139 complaints with the American Association of University Professors in 1971, an increase of 29% over the previous year, and up from about 300 cases three years ago. (See nearly every issue of the AAUP Bulletin for such reports.)

Moreover, the claim that teachers do not need special protections surreptitiously implies that other citizens have only the Constitution to protect their political rights and that they do not enjoy job security. Both beliefs are false. Teachers are no more "particularly favored" with tenure than are millions of people who have job security in the United States today. And what is forgotten as well is that job security does not simply protect

an economic right; it protects political freedom as well by separating economic decisions -- who will work and under what conditions -- from political beliefs, opinions, and actions.

It is worth noting that many workers have job security at a personal cost (in time, preparation, expense, etc.) much less than that incurred by the teacher. In public education itself, clerical workers, janitors, technicians, and others commonly earn the right to continued employment and due process within six months of hiring. It takes elementary and secondary teachers generally three years to earn such a right (after four years of preparation) and college and university teachers five to seven years (after seven years or more of preparation and years of teaching at other levels). School administrators usually do not have tenure in their positions, but they have the right to reclaim a teaching job if they leave or are dismissed from administration. (Sometimes an administrator is "demoted" to teaching!)

Federal judges are appointed for life, during good behavior, and separable only when charges are proved. Civil service and merit systems are widespread in other kinds of public service. Even elected politicians have their own kind of job security: they commonly serve in their positions well after teachers and others are forced to retire, many of them have little or no real competition throughout their careers, and legislatures and the Congress are organized to reward them for seniority. Union labor and other workers in industry have job security; they cannot be dismissed without regard for their political and economic rights. The field of labor-management relations has grown from this recognition. The point is true also for many other workers in private business -- clerical, sales, service, etc., though conventional wisdom still holds that business is a paradigm of the competition necessary to keep teachers on their toes.

It is said that other professionals -- lawyers and doctors, for example -- do not have tenure, and thus they must live by their wits and excellence alone; but this often is more apparent than real. One commentator has noted that large corporations often have policies (though unwritten) that assure senior workers another place in the organization rather than dismissal; and in law firms and other businesses, "membership," "principal," and "partnership" have the same intent and effect as tenure. Moreover, Robert K. Carr observes that few legal firms and medical clinics have any regular means for evaluating members after the trial period when they have been accepted into partnership (10, p. 121).

The point to all of this is not to argue that these persons should be denied their security because usually it is more than what the teacher has. That would be to commit the same mistake as the critic of tenure. Nor is the point to argue that no work is insecure today. Some people still face every day the prospect of dismissal without recourse. And one must agree that this appears to happen more often in private rather than public employment. But to conclude from these conditions that teaching has special rights not enjoyed by most people simply is to misunderstand the direction in which political and economic forces have been moving.

Thus tenure, or job security, is not "special" in the sense that only a few people enjoy it. Teachers must hope for a more careful use of words. Rather, tenure is "special" in that it differs from other forms of job security because of some features that are unique to teaching. Robert K. Carr makes the point that in certain kinds of work -- teaching and the judiciary are the two most noted -- effective performance necessitates a degree of tenure in order to be free from external pressures that inhibit or distort work (10, p. 122). Some sociologists point out that tenure can be explained best by noting how education is organized. This is true particularly in higher education, but the points are appropriate to teaching generally.

For example, Talcott Parsons (in Structure and Process in Modern Societies (Free Press, 1960) points out that education cannot be organized on a "line" principle or judged by 'marginal productivity" and that administrators have great power but little competence to judge the teacher's work. Rather, tenure is used generally by professional workers to balance authority and responsibility and to give some assurance of professional independence and integrity. Theodore Caplow and Reece J. McGee (9, pp. 190-192) generally agree with this view and in addition note that the unpopular view needs to be protected and that tenure embodies the generally agreed on idea that intellectual performance is facilitated by a degree of personal security. They point out that intellectual creativity often is cyclical and sporadic and that important work may be accomplished unevenly over a long time, subject to unexplainable breaks and delays, and that academic employment often is much less secure than comparable work in industry or private practice. Thus, tenure compensates for insecurity.

The last point is important. Tenure often compensates for inadequacies as well as insecurities in teaching. One of these is salary. To put the point another way, some persons argue that tenure is incurred at the cost of higher teacher salaries. Teachers themselves may be of mixed mind about this. The "Opinion Poll" in the January, 1970 issue of Instructor showed a 40-60 split between those who believe tenure impedes high salary and those who do not. But Caplow and McGee say that the more general theory is that the publicly employed and salaried professional has exchanged his opportunity for high remuneration and conspicuous consumption for insured subsistence in order to pursue long-term goals without distraction (10, p. 191). Fritz Machlup, an economist, concurs with this view and notes a variety of implications it has for education. For example, tenure costs not only those already in teaching; it attracts others to teaching as well, and thus can depress salaries even more

(22, p. 324). On the other hand, there is the claim that society benefits by getting better teachers for the price of tenure. The report from Harvard University gives evidence for this belief (16, p. 65).

Would teachers be willing to abandon tenure for higher salaries? Myron Lieberman believes they would (21), though he argues too that the protections of tenure could be stronger and more easily administered through collective bargaining arrangements. In these times there is no reason for teachers to apologize for wanting higher salaries. But whether security must be sacrificed in order to get them is another matter. Some institutions provide both high salaries and tenure. And it is a point worth noting that collective bargaining contracts nearly always retain tenure. Better economic advantages and security thus do not seem to be incompatible.

Finally, it should be noted that some people say tenure is "special" because it is one-sided -- schools cannot terminate tenured teachers at will, but teachers can resign whenever they want. Byse and Joughin say, "Viewed abstractly, the relationship is one-sided. But there is no principle of law or morals that mutual promises must be coextensive" (7, p. 93). They cite numerous decisions in the law that uphold agreements which bind one party but not another.

Less abstractly, the one-sidedness of tenure is not at all real. That is because teaching has mutual arrangements. Many states have penalties for resignation in the middle of the year. In higher education, considerable emphasis recently has been put on faculty "responsibilities." And if a teacher violates a contract, he can be prosecuted. Furthermore, many ways in which tenure benefits the school or system have been noted already. Not the least of these is that tenure secures community with and loyalty to the school and

frees some teachers to do jobs, such as committee work and counseling, that are necessary but which seldom bring reward or status to the teacher.

2. Tenure is not necessary to protect academic freedom. It is not clear what the critics mean when they make this claim. It would be difficult to show by strict logic that the teacher's freedom could not exist without tenure. There must in fact be situations where teachers are free without tenure, and others where they are not free even with tenure. But the evidence is clear that tenure and academic freedom have developed together in the history of teaching. Henry M. Wriston says, "If freedom is the mark of strength, tenure is its symbol" (38, p. 344). The history of the American Association of University Professors is an example. And Howard K. Beale cites other examples from teachers who thought tenure had protected their freedom at one time or another. He quotes too an Indiana superintendent who said, "The effect (of tenure) has not been good here. It has tended to make the teachers more independent" (2, p. 476).

It is significant to notice that so many disputes over the violation of tenure continue to raise issues of academic freedom. Hofstadter and Metzger reviewed 124 academic freedom and tenure cases that had been reported in the AAUP Bulletin through 1953; guarantees of tenure were absent and dismissal on short notice was the issue in fully 63 of the 94 cases where the administration was held to blame. They conclude that these cases "justify the assumption that academic freedom is dependent upon academic tenure and due process" (17, p. 493). The situation has not changed much since 1953, as later issues of the AAUP Bulletin and records of teacher litigation show (11 and 27).

What then do the critics mean? They point out that tenure especially does not protect probationary teachers. But it has been noted that tenure is

not designed to do so. Here two different values are involved: the right of the competent teacher to continued employment, and the right of institutions to determine competence. Tenure requires a school or system to prove that a teacher previously judged to be competent no longer merits that judgment. The probationary teacher, on the other hand, must demonstrate his competence, at which time he should receive tenure; or if he believes his dismissal violates a protected right rather than indicates a judgment of his competence, he must prove the point. All teachers should be protected against arbitrary dismissal, and legislation and court opinions are moving in that direction. But it is not clear how abolishing tenure will secure this right more readily and how previously tenured teachers will be any better protected without tenure.

Fritz Machlup says that the argument that tenure is not necessary to academic freedom would be valid under two conditions: that the institution believes and acts strongly to protect academic freedom, and that dismissals can be distinguished clearly among those that violate academic freedom and other reasons (22, p. 329). But neither condition is satisfied very often in practice. The difficulty of distinguishing among reasons (let alone the "real" reasons) for dismissal is notorious. And the idea that academic freedom finally is secure is absurd. Byse and Joughin note that honest and intelligent administrators and governing boards can provide a primary safeguard, but they recall James Madison's point about political affairs in general, that "Experience has taught . . . the necessity of auxiliary precautions" (7, p. 76).

Nevertheless, the talk continues about tenure as if it had no real bearing on academic freedom. One university president says, the "essential vitality (of tenure) exists in the mind and spirit of those most affected by it, the faculty and administrators." Another says that tenure does not protect academic freedom; that is protected by academic and administrative "courage."

A vice-president says, "The concept of tenure may be more important than the actuality of tenure," and tenure is important as part of the "academic mystique and heritage." One marvels that such rhetoric still exists! But notwithstanding that talk, Stanley Kolnick has shown how obviously meaningless the proclamations of academic freedom were until procedures of tenure were spelled out (28, p. 291). And the issue today still is whether tenure can make what often is a transcendental academic freedom become operational.

Of course it would be absurd to argue that tenure can do the job alone. One can agree with this much of the critics' claim that tenure cannot protect academic freedom. Howard K. Beale noted as long ago as the 1930's that there is a serious danger to having tenure, for it can make one blind to other things. For example, the causes for legitimate dismissal often are so varied and full of loopholes that anyone can be dismissed. A former superintendent of schools in New York commented on teacher dismissals during World War I by stressing the need to distinguish sharply "between the 'charges brought' and the 'real factor that brought about the dismissal'" (2, pp. 480-483).

Others have pointed out that reasonable compensation, sincere recognition, and opportunities for research and contemplation also are needed to support academic freedom (32, p. 589). Byse and Joughin note that foremost among dangers to academic freedom, other than those which tenure protects against, is an unwillingness or inability of some administrators to accept fully the ideas of tolerance and equality (7, pp. 157-160). And periodic review of tenured faculty, becoming popular today, is another practice by which the strength of tenure can be eroded. Nevertheless, tenure still is needed for the protection it does give.

3. Tenure protects the incompetent. This claim is made in a number of ways. It is said that tenure "contributes to," or "protects," or "entrenches" incompetence. And some people believe it is impossible to dismiss any tenured teachers, including those that are incompetent.

These beliefs have persisted for a long time in spite of the lack of evidence they ever have carried. Forty years ago Beale observed that "Obviously unfounded as investigation makes this charge (that only incompetent teachers are concerned with tenure), it has wide credence among superintendents and the public" (2, p. 476). He showed too that teachers had similar beliefs about themselves (2, p. 477). In 1917, a group of university presidents charged that professors wanted to prevent dismissals even of those who were "manifestly unfit," though it gave no evidence for the claim. More recently, the "Scranton Report" and the "Newman Report" gave no evidence for their conclusions that tenure had contributed to diminished quality in higher education and for their recommendations that the tenure system should be changed, and The Wall Street Journal said, "The university's hands are tied because of tenure. . . ." (24). There is more hyperbole in these claims than there is evidence to support them.

Certainly there are enough legal reasons why teachers can be dismissed, and there have been no lack of dismissals in the past. These facts have been noted already. But beyond this there is little factual data to judge the beliefs in any way. In May, 1972 the American Federation of Teachers surveyed state departments of education to determine (since 1969) the number of tenured teachers dismissed, informally asked to resign, whose cases were litigated, reinstated by school boards prior to a court decision, reinstated by a court order, or ultimately dismissed under the terms of a tenure act. The thought was that this would give some evidence by which to measure the claims of

incompetence and inability to dismiss. One would expect proceedings to be taken against the incompetent, and responses to the questions should show the success of those proceedings.

But what the survey showed was that there was nothing to show! Twenty states failed to reply. Fourteen states that did reply could give no information because they kept no records of such matters. Ten others were able to give only partial or approximate information. The only conclusion that stands out from the survey -- and which has been made by many other studies -- is that better records need to be kept. Until they are, one only can guess what the critics have in mind.

Though there are no "proofs" that can be taken from the AFT survey, a few interesting things were brought out. Kansas listed 347 teachers dismissed in 1969-70 and 341 in 1970-71. Of these, approximately 260 were terminated in each year because they were "unsatisfactory," and 80 in each year because of a reduction in staff. In Maryland, charges were brought against 26 tenured teachers in 1969-70, and 689 teachers had contracts that were not renewed or were counseled out of the profession. In Wisconsin, of 256 districts surveyed (57.7% of those in the state), 235 teachers were not renewed, 50 of them because of "disciplinary problems" and 66 because of enrollment or budget drops or program cutbacks.

Oklahoma listed 75 tenured teachers who were dismissed under provisions of the tenure act in each of the four years since 1969. (These must be approximations.) Nebraska had four to six peer reviews in each of four years since 1969 (approximations), and the findings of the review boards were accepted in all cases. In Michigan, 26 teachers were dismissed under the tenure act in the last four years, and eight were dismissed under the tenure act in

New Mexico in four years. New Mexico was the only state where teachers were reinstated by court order (or where records of such were given) -- four in the last four years. Several states had a few teachers who litigated cases in the years since 1969, but only Oklahoma noted that some teachers had been returned to duty by school boards before final court action.

It would be foolish to draw too much from such spotty records. But certainly there is no support in these data for the belief that dismissals of tenured teachers cannot be made. In fact, dismissals are made frequently. Moreover, there is no record that dismissals very often are overturned. The story in higher education is the same: widespread belief that tenure makes it impossible to discipline the faculty, but little evidence to prove the point. On the contrary, in the last year there have been several instances where the dismissal of tenured professors have reached the national news media. (For the story of one of these, see The Chronicle of Higher Education, January 17, 1972, p. 5.)

Anyone who has taught for very long knows that schools have a number of ways to get rid of teachers short of a dramatic public trial of their competence. The devices for doing so are varied. A letter from a state superintendent of schools says, ". . . Most school systems are able to remove incompetent and otherwise unsatisfactory teachers by . . . means such as non-renewal of the contracts of probationary teachers, by placing them on second-class certification status, thereby discouraging them from continuing in their profession by freezing their salaries, and by counseling them out of the profession."

"Counseling out" is a device frequently employed to get rid of tenured teachers. Again the state superintendent: "It is very difficult to get accurate figures on tenured teachers (who are removed); the reason for this being

that in most cases, the superintendent or his designee calls the teacher in for a conference in which he indicates that he intends to recommend that formal charges be brought under (the law). In most cases, the teacher resigns rather than face a hearing before the Board." F. N. Bement studied 97 marginal tenured teachers (they were identified by principals); 26 improved as a result of advising, but 26 others left the schools, probably because they were asked to do so if they did not improve (4). The practice is common in higher education also (35, p. 426). The president of a southern university claims that "Over 50 professors have resigned quietly in the past five years rather than have charges publicly made against them for not adequately fulfilling their jobs."

Thus, tenured teachers can be dismissed, and many who are thought to be incompetent are dismissed, though it is done commonly through informal practices. Furthermore, schools still have an upper hand in dismissing teachers for other reasons. For example, Wisconsin state universities did not renew the contracts of more than 200 non-tenured teachers in 1970 because they claimed to have financial exigencies (The Chronicle of Higher Education, January 24, 1972, p. 2). Unless one assumes that the number of dismissals is small in relation to "wholesale" incompetence (which begs the question) or believes that only a Roman-forum kind of publicity brands the teacher adequately, the critics will have to look for something other than tenure for what they believe is continued incompetence in teaching. It would be no surprise to find that what the critics believe to be "incompetence" is known only to themselves.

Another place to look is at school administration. Hofstadter and Metzger comment that reading the reports in the AAUP Bulletin leads one to believe that administrative, not teacher, incompetence is the unsolved problem of academic life (17, p. 493). As long ago as 1940, Henry M. Wriston, an

administrator himself, said that the real protection of poor teaching is not tenure, but lack of administrative skill or courage (38, p. 344). They refer to the inept way in which teacher dismissals are handled, but other critics indict administration for other reasons as well. Beale believed that administrators opposed tenure because it decreased their authority (2, pp. 475-480). Thirty years later, M. R. Duvall found that a high proportion of superintendents (still) believed tenure interferes with the proper power of superintendents and boards of education (14). More recently, Myron Lieberman has argued that as long as tenure exists, administrators will continue to use it to rationalize their failure to dismiss teachers (21, p. 55).

E. W. Credell surveyed 773 school districts in California and concluded that administrators were not implementing the provisions of the tenure laws regarding retention or dismissal (12). F. N. Bement drew similar conclusions from his study in New York: though principals identified "marginal" tenured teachers, no dismissals or other steps were taken under the tenure statute; teachers who did not improve were invited to leave or put in other positions, but if they did not go, no further steps were taken; and principals tended to deal with problem teachers themselves, rather than using special resources such as psychologists, medical persons, and counselors (4).

Both Bement and Credell say that public hearings are detrimental to the effective use of tenure laws. Presumably some reluctance to deal harshly with teachers prevents administrators from beginning dismissal proceedings, and thus marginal teachers are retained. But a letter included in the AFT survey described above suggests another reason for the ineffectiveness: "We have found that tenure has a poor image in this state because of unsatisfactory history of school board-employer relationships with the Tenure Commission

over their too frequent inability to follow mandated procedures of the Tenure Act and a school board's loss of an appeal to the Tenure Commission over that violation." Tenure is discredited because administrators cannot follow the rules or are unable to prepare a good case. These observations should make teachers think twice about non-public hearings or the abolition of tenure.

Howard K. Beale noted a study done in Indiana in the early 1930's that concluded, ". . . On the whole superintendents are not handicapped in their work by tenure" (2, p. 477). The same is true today. Where initiative is taken and cases are well prepared, there is no reason to believe marginal teachers cannot be dismissed. Certainly they should be dismissed only after their deficiencies have been noted and they are unable to overcome them. Everyone interested in tenure should read Kengo Takata's report of how scrupulous fairness and intelligence is the best way for handling dismissals (34). He notes that dismissing any teacher for incompetence will be difficult unless the school is administered on a sound educational philosophy and in light of current research. Unfortunately, few schools do this. Bement (4) and Credell (12) found also in their studies that many schools do not have observable standards for behavior and competence or for dismissals, and they are at a disadvantage because of this.

The claim that tenure -- in itself -- protects incompetence does not hold up. This is true not only as a conclusion for the general criticisms noted above, but also for some special (and curious) notions about tenure. For example, Robert E. Potter has suggested that tenure can lead to "academic entrapment" (Phi Delta Kappan, December, 1968, pp. 208-213) when the school, resisting social pressures from outside, grants tenure --even to some who are incompetent -- in order to show it is not inclined to violate academic freedom.

There is another, but different, point of view about the relationship between tenure and competence. Some persons argue that it contributes to greater competence. Byse and Joughin quote from an early Kansas legal case (1878) in which the judge held that "The shorter and more precarious the tenure of the office, the less attractive, important and valuable it would be; and generally, men of only inferior talent could be found to accept it or to perform its functions with such a precarious tenure" (7, p. 81).

There is some (though not much) research evidence to back up the point. James W. Gutherie and others have reviewed 17 studies that deal with the effectiveness of school service components. They show that 14 studies found various teacher characteristics, among which was employment status (tenure or non-tenure), to be significantly associated with one or more measures of pupil performance (15, pp. 7031-7033). Specifically, a study (Burkhead) in the Atlanta schools found that low teacher turnover had a positive association with increments on pupil scores on tests of verbal ability (15, p. 7021); and a study (Katzman) in the Boston schools found that the percentage of permanent (tenured) teachers had a minor but positive effect on all outputs and that the turnover rate within attendance districts had a slight negative association with all output measures (15, pp. 7026-7027).

Others point out that tenure has a value because it requires schools to judge the worth of teachers. In the past some teachers commonly have been allowed to remain in their jobs indefinitely without being evaluated. This may have been because of favoritism or exploitation. Today in higher education (it is peculiar there) there is considerable criticism of the "up or out" system, in which an individual either is given tenure (and usually promotion) after a probationary period and a judgment of competence or he must seek a job elsewhere. John R. Silber believes this kind of tenure forces judgments too

early in the careers of young professors, and thus can contribute to lower teacher quality. But it is interesting to note that the "up or out" system was designed originally to prevent the continuation of teachers for long and indefinite periods without their competency being determined (16, p. 68). With tenure, teachers cannot be kept in a servile status forever.

Finally, as far as quality goes, it is doubtful that a change in tenure would make teaching any better. The Harvard tenure report responds to the claim that older, tenured professors are more interested in consulting and publishing than they are in teaching by observing that this is true equally of the younger, non-tenured professors. Abolishing tenure hardly would change this situation. Rather, at Harvard, it is not tenure but the criteria and procedures by which appointments are made that tend to entrench the old and discourage the new. Tenure in fact may give the security and leisure necessary to try new things (16, p. 67). Bierstedt and Metzger also note that if teaching is less than high calibre, the reward systems which schools follow probably lead to it, not tenure (5, p. 6). And Edwin C. Stene believes that where the security of tenure interferes with high standards, a full look at the situation might show that tenure was given too hastily or that other school policies lead to the problem (32, pp. 588-589).

Program

Education is ruled by fads. A short time ago the fad was "relevance." Before then it was "excellence." Today, two fads are "accountability" and "alternatives." To call these fads is not to say that interest in them is not genuine or that education does not need to change. It is to say that the concepts function too often simply as slogans that divert attention from real issues and imply unsound action.

The criticism of tenure today is at this point. Claims that education must find "alternatives to tenure" have become a fad. The quest for alternatives assumes that the criticisms of tenure are real and substantial and that anything would be better than tenure. The previous discussion has shown that there is little basis for the first assumption, and the second is built on wishful thinking. The extent to which even friends of tenure can be pushed to thinking that "something must be done" is indicated by Robert K. Carr's remark that "It will be time to halt such ventures (different tenure practices) if they appear to exact too high a price in terms of violations of academic freedom or unfair or inhumane teacher dismissals" (10, p. 127). At the pace at which things move today, it is fantastic to ask teachers to sacrifice the protections they have for hopes of this kind.

A number of the more thorough and thoughtful studies conclude that the alternatives to tenure are "by no means obvious" (37, p.330). Major institutional studies have concluded that there are no satisfactory alternatives to tenure. A study at the University of Utah concluded that the affirmative educational values associated with tenure would be threatened by its abolition and recommended that tenure should be maintained (35, p. 431). A similar analysis came in the study at Harvard University (16). In California, the State Senate prompted a study of the objectives of tenure and the policy

alternatives available for achieving those objectives. The conclusion was that no alternatives could protect academic freedom and economic security as well as tenure or would enable adequate evaluation of faculty performance and dismissal for cause through due process (8, p. IV-2).

To be sure, none of these studies assume that tenure is perfect. But where there are faults, the recommendations are that they can and should be remedied within the tenure system. Not all the problems in educational institutions can be traced to tenure, however. For example, the report from the University of Utah points out that many of the deficiencies said to be related to tenure would exist even in its absence (35, p. 431), and the report from Harvard notes that much of the criticism of tenure turns out to be a criticism of what are assumed to be the standards of judgment for appointment or procedures which presumably enable less valuable teachers to be advanced over the more valuable ones (16, p. 68).

Nevertheless, these conclusions seldom gain the attention of the popular critics of tenure. It is as if the studies never existed! Perhaps that is why more than one state legislator believes that the attempt to change tenure is "in line with a trend throughout the nation." In spite of the general lack of evidence to support the criticisms, and the recommendations of some of the more thorough and balanced analyses, a welter of alternatives still are advocated to replace tenure. But teachers should not be stamped in that direction. Thus, it is necessary to look briefly at some of the alternatives and to point out their shortcomings. In the process, a point of view for teachers can be suggested.

The alternatives begin with simply abolishing tenure and not replacing it. The suggestion is so extreme as to be unattractive to almost everyone except those who toy with the idea for their own reasons (it is heard in

legislative circles periodically). But there is an element of this suggestion in almost every other alternative, for they call for abolishing tenure at some point. Teachers should consider this carefully, for there is embodied in tenure a variety of ideals, procedures, and relationships, some subtle and others more apparent, that may be lost -- if only by being overlooked -- in any switch that is made. This is a danger particularly where the advocates of another approach appeal to "the public good" or "the good of the profession." If teachers are diverted by these pieties, they might overlook their own interests in tenure and lose in the process some ingredient of value.

Perhaps the most popular alternative advocated so far is the contract or term appointment plan. Some colleges already have replaced tenure with term contracts that call for reevaluation before reappointment. Other colleges have proposed periodic reevaluation of tenured faculty and have lenthened the probationary period required for tenure. The same things have been happening in elementary and secondary education. New York has increased the probation required for tenure to five years, and a proposal has been made in several states that tenured teachers be reevaluated periodically. Term appointments, periodic reevaluation, and lengthened probation all are attempts to reduce what are thought to be the strictures of tenure.

There are a variety of term appointment plans; some of them would erode the safeguards of tenure less than others. A common practice is a five-year contract. The Wall Street Journal tells about "rolling appointments" in one college, where faculty get new three-year appointments after each year of satisfactory performance (24). Florence Moog proposes seven-year contracts that incorporate a sabbatical year to be used in preparing for the next contract period or, in the event of dismissal, to seek another job (25). John R. Silber, president of Boston University, believes tenure should be given only at the end

of two seven-year terms, with evaluation after each term (31). Frederick H. Jackson and Robin S. Wilson propose a plan for "incremental tenure" to be tied to contractual agreements: probationary periods of different lengths would be required at each rank, and one-time renewals would be granted (18).

Myron Lieberman believes that teachers would have more strength in contracts, but he is talking about negotiated contracts rather than unilateral, school-offered contracts (21). Lieberman says that contract remedies are more expeditious than those provided by tenure and that more effective negotiated agreements depend on doing away with tenure, for if the laws remain, administrators will continue to cite practical and legal arguments why they cannot grant better teaching conditions and rewards. One can agree that it probably would be more expeditious (and thus less expensive) to go through binding arbitration than it would be to have a tenure hearing with the possibility of a court appeal. But efficiency is not the only thing to be considered.

Byse and Joughin, and others, have pointed out that there are particular advantages to legal tenure. Tenure is subject to legal review, has rights that are enforceable by law, and provides judgment by a disinterested tribunal (7, p. 75). (That is, the best plans do. Some fall far short.) Moreover, violations of contract generally lead only to money damages, whereas violations of law can lead to the restitution of one's job (7, p. 72). Of course, such protections can be written into contracts -- and would need to be if the teacher is to be protected adequately. But the point is that doing so would reinstitutionalize the tenure practices. Why then abolish them in the first place?

The report on tenure at the University of Utah observes that the difference between fixed term contracts and the abolition of tenure is negligible (35, p. 430). This is because there is no presumption for continued employment beyond the term. The same thing is true of periodic reevaluation

of teachers. Bierstedt and Metzger have said that "this would not be a tenure system at all. . . . If insecurity has a chilling effect upon the exercise of academic freedom over a period of one or two years it would also chill over a longer period" (5, p. 6). The Harvard tenure report agrees that review procedures "would in effect place every faculty member on term appointment" (16, p. 68). On the other hand, if the presumption of renewal is given, then in that respect the contract is like tenure (35, p. 430).

Really, it is this matter that makes the contract proposal a paradox. Either contracts (and periodic reevaluations) provide less security, and thus raise all the questions of tenure again, or if provisions are made within the contract for these securities, then tenure has reappeared. Examples of the questions are: What right or expectation will teachers have to reappointment? Will standards for reappointment be more common and known publicly, and will teachers be notified of their shortcomings and be helped in overcoming them? How are dismissals to be handled <u>within</u> the contract period? How will academic freedom (and civil liberties) be protected, if one must worry about reappointment? Will the contract alternative create better community and loyalty and make it worthwhile to do the "little jobs" that are so much a part of teaching? Some of the contract plans noted above would continue teachers in a probationary status for as long as 15 or 20 years, after which they might be released. Are such teachers to have no rights or equity in their jobs? These matters are not simply of personal interest to the teacher but raise real issues about blocks to teaching. The critics of tenure would do well to face the issues squarely rather than spend time devising schemes for getting around tenure.

One persistent criticism is that tenure requires judgments to be made about the long-range worth of teachers too quickly and early in their careers. Ostensibly this criticism has led to the movements to extend the probationary

period to five years (from, normally, three years) in elementary and secondary education, and longer in higher education, and to proposals, such as Silber's (31), for multiple (and long) contract periods before permanent employment. Silber believes that professors engage in "academic hustling" in order to make tenure early and that in doing so they develop bad habits for their later, tenured service. But it is not clear how fewer bad habits would be developed if the professor has to do the same things for contract renewal that he must do to get tenure today. This is to say that tenure and the probationary period are not the places to look for the causes of academic hustling. If professors are to have the leisure to read and think more, and fill the journals less with cheap publications, as Silber believes they should, a restructuring of the "publish or perish" pressure, the organization of work, and the rewards systems in schools would achieve those ends more readily.

It is absurd that a teacher's competence and value cannot be judged within a shorter rather than a longer period of time. The argument has been around for ages. Donald DuShane, a superintendent of schools and chairman of the National Education Association's committee on tenure in the 1930's, believed that "most teachers' groups have been 'over solicitous of public welfare' in supporting long probationary periods" (2, pp. 479-480). He thought that experience had shown that probationary periods of from three to five years had been abused by many school boards and superintendents, and that if the probationary period was to be retained at all, "it should be reduced to not over one or two years" (2, p. 480).

Before they are ready for their first jobs most teachers have had a minimum of four years (and commonly five or six years) of professional training. Many also have had some experience. In higher education, teachers commonly spend seven years in professional preparation, and if they achieve tenure

within the common five to seven years, they have spent 12 to 14 years getting ready to practice their specialty permanently. If they teach in professional schools -- education, business administration, engineering -- they often have had three or more years of experience in addition, for a total of 15 to 18 years of "getting ready." Surely this time is not at all inadequate for judging their worth.

In fact, it is too long. Louis Joughin (19) relates biological age to scholars' academic chronology and shows that in higher education tenure appointments for a person in a non-demand field probably come between ages 35 and 45. What this does, Joughin believes, is inhibit mind, imagination, and scholarly audacity. It increases the probability that the school will attract those who seek mainly security, and it entrenches institutional ambitions, self-service, and manipulation. (Thus, long probationary periods probably work against the values tenure critics want and in favor of those they criticize.) What is needed instead, Joughin argues, is less institutional conceit and a greater dependence on reasonably quick decisions for tenure within an imaginatively flexible system. Such a plan may lead to some errors (a few may be let go too soon and others kept too long) but it will lead also to a greater discovery of talent. Fritz Machlup believes much the same thing. He points out that in an active career of 35 years, probationary periods that may be as long as one-quarter of that time are excessive (22, p. 337).

Another alternative is to replace tenure with collective bargaining. This proposal makes the critics wiggle! On the one hand there is Lieberman's view, discussed previously, that more effective collective bargaining cannot be accomplished until legal tenure is abandoned. On the other hand there are those who use collective bargaining as a "red herring" to get tenure retained. Doing away with tenure, they say, is an inadvertent cry for unionism.

Where tenure did not exist, some other form of security, probably collective bargaining, would be devised to protect teachers, and that security may restrict educational management more severely. The Harvard tenure report tells that in the 1930's a union of Arts and Sciences faculty contributed to a stricter definition of tenure and to the abolition of extended-term appointments (16, p. 65).

But tenure and unionism need not work against each other; they can be mutually reinforcing. It has been said previously that legal support and sanctions can add strength to contractual arrangements. And it has been noted that nearly all teacher collective bargaining agreements still retain tenure. Shanker has pointed out that while strong teacher groups might benefit from replacing tenure with negotiated contracts, millions of teachers in places where organizations are weak would not benefit (29). A similar point was noted by DuShane in 1934:"While it is true that effective teachers' organizations can be developed without tenure in large cities, it is equally true that such organizations . . . are impossible in rural communities without tenure protection" (2, p. 480). Beale claims in his studies that freedom has been most secure in those large urban areas where teacher organizations have been the strongest. Tenure can be viewed sensibly in much the same way as a minimum wage: the law is needed as a basic protection for everyone, though organized workers might negotiate something even better when they can (29).

Another persistent criticism is that tenure makes jobs less available for younger teachers. This criticism is made in higher education more than elsewhere, and it has been around for ages (see 38, pp. 345-347). The New York Times (March 30, 1970) has noted that teachers who graduated in the 1950's now have the permanent jobs, and an article in The Wall Street Journal (24) makes it sound as though young, bright, and creative teachers are dismissed wholesale because the old and stodgy professors have the only permanent jobs.

And there are variations on this theme. Robert K. Carr has pointed out that new strains are being put on tenure by a federal government that is concerned with the equal employment of women, blacks, and other minorities (10, pp. 124-125). An extreme view of this last point has been taken by Florence Mocg, who believes that tenure has been a significant item among the procedures keeping blacks and women off college and university faculties (25).

The strains are real enough, no doubt, but whether tenure creates them is questionable. That is, almost everyone agrees that not enough teaching jobs are available today and that more blacks and women should be in teaching, but there is no evicence that these problems are caused significantly by tenure, and changing tenure would not make much difference in them. It is fantastic, for example, to blame tenure for the lack of women and blacks in teaching in higher education. (What can be blamed for the scarcity of these persons in university administration?) Have the critics never heard of societal prejudice: how blacks have been kept out of higher education deliberately by a policy of segregation, and women, though they have been able to go to college, have been restricted by counseling into a narrow range of activities? And what about hiring and promotion policies, the subject matters studied and taught, the allocation of resources, and concepts of merit and rewards? These are the things that have kept people from equal teaching opportunities, and they, not tenure, are the things that must be changed if more opportunities are to be available.

The critics must assume that most teaching jobs are taken by tenured people and that there is little turnover in those jobs. There is little direct information about this matter in elementary and secondary education. While it might seem that the number would be high because tenure comes more quickly at those levels, there are a number of circumstances that probably

make this not so. There is a large turnover in teaching: some studies show that one out of every two persons leave teaching within two years of their beginning, and those who remain change jobs frequently. These people never gain tenure, or they lose it when they move. Lengthened probationary periods might make the number of tenured teachers even fewer. Also, the "over-supply" of teachers has some effect on this matter. Albert Shanker has claimed (New York Times, April 19, 1972) that experienced teachers are being dismissed so that less expensive, inexperienced teachers can be employed. All of this is to say that tenure cannot have a great effect on the turnover in jobs in elementary and secondary education.

The same is true in higher education. It might seem to be the case, as one vice president has said, that the number of tenured teachers is getting close to the point where a "healthy turnover" is impossible, but the general evidence is otherwise. A number of studies have shown either average or median percentages for total or full-time faculty on tenure. Two of them (13 and 8) show a median near 57%. Two others (22, pp. 332-333, working with the figures from 7, pp. 162-165; and 30, p. 14) show an average of nearly 54% of the full-time faculty on tenure. Considering the total faculty makes the figures lower. The institutions Byse and Joughin studied (see 22, pp. 332-333) showed that only 31% of the total faculty (compared to 53% of full-time faculty) were on tenure; and in the study at the University of Utah only 19% of the 2,434 faculty are on tenure, and when teaching assistants are excluded the proportion still is only 24% (35A).

There is nothing in these data to show that tenure is making the job situation difficult for younger teachers. Certainly the studies also show that some institutions have a higher percentage of teachers on tenure, but usually these are the smaller institutions where there are relatively few

jobs available anyway. Also, in the lower teaching ranks -- lecturers, instructors, assistant professors -- where younger faculty normally would be employed, there is an even smaller percentage of individuals on tenure. Dressel points out, furthermore, that while most institutions do not have a ceiling on the number of tenured faculty, they do try to maintain a rough balance between the two upper and two lower ranks, though there are many factors that make this difficult to achieve (13, p. 253). And there is an implication in the analysis and recommendations given by Byse and Joughin that (generally) more, not less, faculty should be on tenure and that the provisions for tenure should be strengthened (7, Ch. IV).

The Harvard tenure report has analyzed the claim that tenure restricts the opportunities for women and minorities, and its conclusions seem equally applicable to the more general question above. The report believes that tenure is not an impediment to those opportunities. There is evidence for the judgment. An early target for women tenured professors in the Faculty of Arts and Sciences at Harvard has been set just below ten percent, and the normal turnover of tenured persons in that faculty within the next ten years will be nearly 30 percent (16, p. 66). Though the figures may differ slightly in other faculties, it is obvious that a considerable number of tenured positions are vacated over a period of years. Furthermore, the report notes, tenured positions can be "husbanded" for the day when blacks and women will be available to move into them, and "spacing out" tenure appointments can help too.

All of these suggestions, within the tenure system, would have better effects than would the abolition of tenure. In addition, if serious attention was given to bringing under control the overproduction of college teachers (Ph.D.'s) and to economic factors that restrict work for large numbers of people, the results would be more effective. Instead, the critics of tenure

busy themselves with dramatic gestures -- advocating very early retirement, in a society where the problems of leisure and the elderly yet have to be managed, is another scheme -- and overlook things that would make a difference.

Finally, there is the alternative that tenure should be left up to the courts to protect. There is no question that the courts can provide a basic protection and that they have played a role in strengthening tenure. But it is not wise to rely on the courts alone. In the first place, the courts are not legislative agencies, but can only interpret one's rights in relation to laws or Constitutional privileges that already exist. Also, the courts should be a place of last resort; and in these times of overburdened dockets and expensive litigation, in many cases they are literally a last hope. Individuals and institutions should attempt to work out their problems before having to go to court. Moreover, in courts the judgments for professional matters would be taken out of teachers' hands and the burden always would be on the teacher, not the school, to show that his rights had been violated. Finally, schools should make a special effort to cherish and care for the freedom of thought and expression of their members (16, p. 65). Indeed, some persons have noted that because of their purpose, schools should allow greater freedom than is required even by the Constitution. Tenure can help to provide these protections, even where the law may not be required to do so.

Summary

What are teachers to make of the criticisms and proposals and of this analysis? Not, certainly, that tenure is without flaws or that improper advantage is not taken of tenure occasionally. But the major criticisms of tenure are generally without evidence, and there is no reason to believe that changing from tenure to some other system would benefit education generally, let alone teachers.

Furthermore, tenure is not a simple concept or process. Therefore, explanations and justifications of tenure probably always will fall somewhat short of the mark, and judgments must be made on balance. But tenure is at least the right to hold a job, after competence has been demonstrated, unless it can be proven through due process that the teacher is no longer worth that trust. This right is given to teachers not as a personal favor but because of the kind of work they do, which needs protection, and society benefits as well.

Different groups have different interests in tenure and are affected differently by tenure. Teachers should not be ashamed that their interests are different from educational management, or even students, and on one represents "the public interest" more than anyone else. The public interest is the interest of everyone, and the only way this can be determined is by groups interacting through their own interests. Teachers thus should not be bullied into revising tenure in order to get rid of other teachers, or to reduce school budgets, or some other thing. If these things are defensible and if they must be done, they are the tasks of educational management.

The fact that so many claims are made against tenure without evidence, considering the checkered history of freedom in teaching, should make teachers

wonder about the real interests of those who want to change tenure. And even if the motives of some critics are not suspect, there is enough reason to wonder why they do not know how to attack the problems of education directly, rather than through the bogus route of restricting teachers even more. Teachers and teachers' organizations should support and even extend and strengthen tenure as <u>their</u> contribution to better education, rather than let others take the lead and trick them out of tenure with false evidence and false hopes and false promises.

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